

Senate Bill No. 538

Passed the Senate April 25, 2013

Secretary of the Senate

Passed the Assembly September 4, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 25102.1, 25165, 25252, 25254, 25401, 25530, 25532, 25608, 25608.1, 29542, and 29545 of the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

SB 538, Hill. The Corporate Securities Law of 1968.

(1) The Corporate Securities Law of 1968 provides for the regulation of the issuance of corporate securities. The law requires an offer or sale of a security that is exempt from registration under the federal Securities Act of 1933 to meet specified requirements, including filing a notice with the Commissioner of Corporations. Commencing on July 1, 2013, various duties of the Commission of Corporations under this law are transferred to the Commissioner of Business Oversight.

This bill would modify references to that federal law.

(2) The Corporate Securities Law of 1968 authorizes the commissioner, after appropriate notice and opportunity for hearing, to levy administrative penalties, as specified.

This bill would authorize, after exhaustion of administrative remedies, the commissioner to apply to the appropriate superior court for a civil judgment of the imposed penalties.

(3) Existing law makes it unlawful for a person to offer or sell a security by means of making an untrue statement of a material fact or omitting to state a material fact necessary to make the statements not misleading, as specified.

This bill would recast this provision and expand the basis for unlawful activity, as specified. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(4) The Corporate Securities Law of 1968 authorizes the commission to order a person to refrain from violating certain of its provisions, and provides a person so ordered one year to seek an administrative hearing.

This bill would reduce the period in which an individual may seek a hearing to 30 days, and authorize the commissioner to order a person to refrain from violating a rule or order adopted under the Corporate Securities Law of 1968, and to seek ancillary relief,

including, but not limited to, a claim for restitution before an administrative law judge. This bill would also allow the commission to file an order for relief with the superior court to enforce a final order from an administrative proceeding that would have the same effect as a judgment of the superior court.

(5) Existing law prohibits a person from, on behalf of a licensed broker-dealer or on behalf of an issuer, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless the broker-dealer and agent have complied with rules of the commissioner for the qualification and employment of those agents. Existing law prohibits a person from, on behalf of a certified investment adviser, offering or negotiating for the sale of investment advisory services of the investment adviser unless the investment adviser and person have complied with rules of the commissioner for the qualification and employment of those persons. Existing law requires the commissioner to impose a fee of \$25 for the filing of a notice or report required by these rules.

This bill would authorize the commissioner to impose a fee of \$35 to keep a notice or report required under these provisions in effect for the following year.

(6) This bill would also make legislative findings and declarations.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Regular, periodic regulatory examinations of broker-dealers and investment advisers is critical to the protection of consumers, many of whom rely on broker-dealers and investment advisers for help in managing investments and in making sound financial decisions.

(b) The Department of Corporations lacks license fee revenue sufficient to perform regular, periodic regulatory examinations of

broker-dealers and investment advisers at a frequency that would ensure high levels of consumer protection.

(c) It is the intent of the Legislature that revenue raised through amendments made by this bill to Corporations Code Sections 25608 and 25608.1 be used to perform regular, periodic regulatory examinations of broker-dealer agency and investment adviser representatives at least once every four years, or more often, if deemed necessary for the protection of the public by the Commissioner of Corporations.

SEC. 2. Section 25102.1 of the Corporations Code is amended to read:

25102.1. The following transactions are not subject to Sections 25110, 25120, and 25130:

(a) Any offer or sale of a security to a “qualified purchaser” as that term is defined by rule of the Securities and Exchange Commission pursuant to Section 18(b)(3) of the Securities Act of 1933 (15 U.S.C. 77r), if all of the following requirements are met:

(1) A notice is filed with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice required by paragraph (1).

(3) Payment of a notice filing fee provided for in subdivision (b) of Section 25608.1.

(b) Any offer and sale of a security with respect to a transaction that is exempt from registration under Section 4(4) of the Securities Act of 1933 pursuant to Section 18(b)(4)(B) of that act.

(c) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(C) of that act.

(d) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(E) of that act, if all of the following requirements are met:

(1) A notice in the form of a copy of the completed Form D (17 C.F.R. 239.500) filed with the Securities and Exchange Commission is filed with the commissioner within 15 days of the first sale in this state, along with documents filed with the Securities and Exchange Commission in annual or periodic reports

that the commissioner by rule or order deems appropriate. The commissioner may allow for a notice in the form of the electronic transmission of the information in Form D.

(2) A consent to service of process under Section 25165 is filed with the notice as required by paragraph (1).

(3) Payment of the notice filing fee provided for in subdivision (c) of Section 25608.1 is made.

(e) Notwithstanding the language of subdivisions (a), (b), (c), and (d) of this section, an issuer may file an application for qualification pursuant to Section 25111, 25112, 25113, 25121, 25131, or 25142.

SEC. 3. Section 25165 of the Corporations Code is amended to read:

25165. Every applicant for qualification of the sale of securities under this law or every person filing an application or a notice under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or a request for or notice of an exemption from qualification (other than a California corporation, California limited partnership, California limited liability company, or a person licensed as a broker-dealer in this state) shall file with the commissioner, in such form as prescribed by rule, an irrevocable consent appointing the commissioner or his or her successor in office to be the applicant's or person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the applicant or person or the successor, executor or administrator thereof, which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous qualification under this law (or application for a permit under any prior law if the application under this law states that such consent is still effective), or in connection with a notice filing under Section 25100.1, 25101.1, 25102.1, and 25230.1, need not file another. Service may be made by leaving a copy of the process in the office of the commissioner but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed

in the case on or before the return day of the process, if any, or within such further time as the court allows.

SEC. 4. Section 25252 of the Corporations Code is amended to read:

25252. The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:

(a) Any person subject to this division, other than a broker-dealer or investment adviser, who willfully violates any provision of this division, or who willfully violates any rule or order adopted or issued pursuant to this division, is liable for administrative penalties of not more than one thousand dollars (\$1,000) for the first violation, and not more than two thousand five hundred dollars (\$2,500) for each subsequent violation.

(b) Any broker-dealer or investment adviser that willfully violates any provision of this division to which it is subject, or that willfully violates any rule or order adopted or issued pursuant to this division and to which it is subject, is liable for administrative penalties of not more than five thousand dollars (\$5,000) for the first violation, not more than ten thousand dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars (\$15,000) for each subsequent violation.

(c) The administrative penalties shall be collected by the commissioner and paid into the State Corporations Fund.

(d) The administrative penalties available to the commissioner pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the commissioner to enforce the provisions of this division.

(e) After the exhaustion of the review procedures provided in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and costs awarded in a final decision and order compelling the respondent, or the named or cited person, to comply with the final decision of the commissioner brought under this division. The application shall include a certified copy of the final decision of the commissioner and shall constitute

a sufficient showing to warrant the issuance of the judgment and order from superior court.

SEC. 5. Section 25254 of the Corporations Code is amended to read:

25254. (a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(b) In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations.

(c) After the exhaustion of the review procedures provided in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and costs awarded in a final decision and order compelling the respondent, or the named or cited person, to comply with the final decision of the commissioner brought under this division. The application shall include a certified copy of the final decision of the commission and shall constitute a sufficient showing to warrant the issuance of the judgment and order from superior court.

SEC. 6. Section 25401 of the Corporations Code is amended to read:

25401. It is unlawful for any person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to do any of the following:

(a) Employ a devise, scheme, or artifice to defraud.

(b) Make an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

(c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

SEC. 7. Section 25530 of the Corporations Code is amended to read:

25530. (a) Whenever it appears to the commissioner that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this division or any rule or order hereunder, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with this law or any rule or order hereunder. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate.

A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, trustees or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court, by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

(c) In any case in which a defendant is ordered by the court to pay restitution to a victim, the court may in its order require the payment as a money judgment, which shall be enforceable by a victim as if the restitution order were a separate civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Any order issued under

this subdivision shall contain provisions that are designed to achieve a fair and orderly satisfaction of the judgment.

SEC. 8. Section 25532 of the Corporations Code is amended to read:

25532. (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.

(b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

(d) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this division or a rule adopted or order issued under this division, the commissioner may issue an order directing the person to desist and refrain from engaging in the act, practice, or course of business, or take other action necessary or appropriate to comply with this division.

(e) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this division a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(f) If, after an order has been served under subdivision (a), (b), or (c), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the commissioner and is not subject to review by any court or agency, notwithstanding Section 25609.

The commissioner may file a certified copy of the final order with the clerk of the superior court or any court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

If a person does not comply with an order under this section, the commissioner may petition the superior court or any court of competent jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt and may grant any other relief the court determines is just and proper in the circumstances.

SEC. 9. Section 25608 of the Corporations Code is amended to read:

25608. (a) The commissioner shall charge and collect the fees fixed in this section and Section 25608.1. All fees charged and collected under this section and Section 25608.1 shall be transmitted to the Treasurer at least weekly, accompanied by a detailed statement thereof and shall be credited to the State Corporations Fund.

(b) The fee for filing an application for a negotiating permit under subdivision (c) of Section 25102 is fifty dollars (\$50).

(c) The fee for filing a notice pursuant to paragraph (5) of subdivision (h) of Section 25102 and the fee for filing a notice pursuant to paragraph (4) of subdivision (f) of Section 25102, in addition to the fee prescribed in those paragraphs, if applicable, shall be determined based on the value of the securities proposed to be sold in the transaction for which the notice is filed and in accordance with subdivision (g), and shall be as follows:

Value of Securities Proposed to be Sold	Filing Fee
\$25,000 or less	\$ 25
\$25,001 to \$100,000	\$ 35
\$100,001 to \$500,000	\$ 50
\$500,001 to \$1,000,000	\$150
Over \$1,000,000	\$300

(d) The fee for filing an application for designation of an issuer pursuant to subdivision (k) of Section 25100 is fifty dollars (\$50).

(e) The fee for filing an application for qualification of the sale of securities by notification under Section 25112 or by permit under paragraph (1) of subdivision (b) of Section 25113 (except applications for qualification by permit of the sale of any guarantee of any security, the fees for which applications are fixed in subdivision (k)) is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

The fee for filing a small company application for qualification of the sale of securities by permit under paragraph (2) of subdivision (b) of Section 25113 is two thousand five hundred dollars (\$2,500). In the case where the costs of processing a small company application exceed the filing fee, an additional fee shall be charged, not to exceed one thousand dollars (\$1,000), over and above the filing fee based on the costs of the salary or other compensation paid to persons processing the application plus overhead costs reasonably incurred in the performance of the work. In determining the costs, the commissioner may use the estimated average hourly cost for all persons processing applications for the fiscal year.

(f) The fee for filing an application for qualification of the sale of securities by coordination under Section 25111 or a notice of intention to sell under subdivision (t) of Section 25100 is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

(g) For the purpose of determining the fees fixed in subdivisions (e) and (f):

(1) The value of the securities shall be the price at which the company proposes to sell the securities, or the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration (if other than money) to be received in exchange therefor, or of the securities when sold, whichever is greater.

(2) Interim or voting trust certificates shall have a value equal to the aggregate value of the securities to be represented by the interim or voting trust certificates.

(3) The value of a warrant or right to purchase or subscribe to another security of the same or another issuer shall be an amount equal to the consideration to be paid for that warrant or right plus an amount equal to the consideration to be paid upon purchase of the additional securities, provided that if the latter amount is not determinable at the time of qualification, that amount shall then be the value of the additional securities as determined by the commissioner.

(4) In the case of a share dividend where the shareholders are given an option to accept either cash or additional shares of common stock, the value of the securities to be sold shall be the maximum amount of cash that would be payable in the event that all shareholders elected to accept cash.

(h) The fee for filing an application for qualification of the sale of securities by permit under Section 25121 is:

(1) Two hundred dollars (\$200) in connection with any change (including any stock split or reverse stock split or stock dividend, except a stock dividend where the shareholders are given an option to accept either cash or additional shares of common stock) in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(2) Two hundred dollars (\$200) plus one-fifth of 1 percent of the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration to be received in exchange therefor, up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500), in any exchange of securities by the issuer with its existing security holders exclusively, or in any exchange in connection with any merger or consolidation or purchase of corporate assets in consideration of the issuance of securities, or any entity conversion transaction.

(i) The fee for filing an application for qualification of the sale of securities by notification under Section 25131 shall be one hundred dollars (\$100).

(j) The fee for an application for the removal of any condition under Section 25141 is fifty dollars (\$50).

(k) The fee for filing any application for a permit to execute or issue any guarantee of any security is fifty dollars (\$50).

(l) The fee for acting as escrowholder for securities under Section 25149 is fifty dollars (\$50). In addition, a fee of two dollars and fifty cents (\$2.50) shall be paid for the deposit with the commissioner of each new certificate or other document resulting from a transfer in escrow.

(m) The fee for filing an application for an order (1) consenting to the transfer in escrow of securities or (2) consenting to the transfer of securities subject to any condition imposed by the commissioner requiring the commissioner's consent to the transfer is twenty dollars (\$20) for each transfer.

(n) The filing fee for an amendment to an application filed after the effective date of the qualification of the sale of securities is fifty dollars (\$50) plus any additional fee that would have been required to be paid with the original application for qualification of the sale of securities under this section if the matters set forth in the amendment had been included in the original application.

(o) (1) The fee for filing an application for a broker-dealer certificate under Section 25211 is three hundred dollars (\$300).

(2) Each broker-dealer shall pay to the commissioner its pro rata share of all costs and expenses, reasonably incurred in the administration of the broker-dealer program under this division, as estimated by the commissioner for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The pro rata

share shall be the proportion that the broker-dealer and the number of its agents in this state bears to the aggregate number of broker-dealers and agents in this state as shown by records maintained by or on behalf of the commissioner. The pro rata share may include the costs of any examinations, audit, or investigation provided for in subdivision (r).

(3) Every broker-dealer who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a minimum assessment of seventy-five dollars (\$75) on or before the 31st of December in each year.

(4) The commissioner may assess and levy against each broker-dealer any additional amount above the minimum assessment amount of seventy-five dollars (\$75) that is reasonable and necessary to support the broker-dealer program under this division. If an additional amount is assessed, the commissioner shall notify each broker-dealer by mail of any additional amount assessed and levied against it on or before the 30th day of May in each year, and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty in addition to the assessment of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(5) If a broker-dealer fails to pay any assessment on or before the 30th day of the month following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the broker-dealer. If, after that order is made, a request for hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a broker-dealer shall not conduct business pursuant to this division except as may be permitted by order of the commissioner; provided, however, that the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided under this division.

(6) In determining the amount assessed, the commissioner shall consider all appropriations from the State Corporations Fund for the support of the broker-dealer program under this division and all reimbursements applicable to the administration of the broker-dealer program under this division.

(p) (1) The commissioner shall charge a fee of twenty-five dollars (\$25) for the filing of a notice or report required by rules adopted pursuant to subdivision (b) of Section 25210 or subdivision (b) of Section 25230.

(2) The commissioner may charge a fee up to thirty-five dollars (\$35) to keep in effect for the following year any notice or report required by rules adopted pursuant to subdivision (b) of Section 25210 or subdivision (b) of Section 25230.

(3) No person shall, on behalf of a broker-dealer licensed pursuant to Section 25211, effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state unless the broker-dealer pays the annual fee required by paragraph (2) of this subdivision on or before the day upon which payment is due.

(4) No person may, in this state, on behalf of an investment adviser licensed pursuant to Section 25231, offer or negotiate for the sale of investment advisory services of the investment adviser, determine which recommendations shall be made to, make recommendations to, or manage the accounts of, clients of the investment adviser, or determine the reports or analyses concerning securities to be published by the investment adviser, unless the investment adviser pays the annual fee required by paragraph (2) on or before the day upon which payment is due.

(5) The commissioner may by order summarily enjoin an individual from performing any activity under paragraph (3) or (4) if the annual fee in paragraph (2) is not paid on or before the day upon which payment is due. An order under this paragraph may not be made before 10 days after notice by the commissioner that the fee is due and unpaid.

(q) (1) Except as provided for in paragraph (2), the fee for filing an application for an investment adviser under Section 25231 is one hundred twenty-five dollars (\$125), and payment of this amount shall keep the certificate, if granted, in effect during the calendar year during which it is granted. Every investment adviser who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a renewal fee of one hundred twenty-five dollars (\$125) on or before the 31st day of December.

(2) Paragraph (1) shall not apply to a broker-dealer licensed under Section 25210.

(r) (1) Except as provided for in paragraph (2), the fee for any routine or nonroutine regulatory examination, audit, or investigation is the amount of the salary or other compensation paid to the persons making the examination, audit, or investigation plus the amount of expenses including overhead reasonably incurred in the performance of the work. In determining the costs associated with an examination, audit, or investigation, the commissioner may use the estimated average hourly cost for all persons performing examinations, audits, or investigations for the fiscal year.

(2) An investment adviser licensed under Section 25230 pursuant to the Investment Adviser Registration Depository shall not be subject to paragraph (1) only in regard to the fee for a routine regulatory examination of its investment advisory services for which it is licensed under Section 25230.

(s) The fee for any hearing held by the commissioner pursuant to Section 25142 shall be the sum determined by the commissioner to cover the actual expense of noticing and holding the hearing.

(t) The commissioner may fix by rule a reasonable charge for any publications issued under his or her authority. The charges shall not apply to reports of the commissioner in the ordinary course of distribution.

(u) The fee for filing an offer under subdivision (b) of Section 25507 shall be the amount of filing fee payable under subdivision (e), (f), (h), or (i) of this section if an application had been filed to qualify the transaction in which the securities upon which the offer is to be made were sold in violation of the qualification provisions of this law.

(v) The fee for filing an application for exemption pursuant to subdivision (l) of Section 25100 is two hundred fifty dollars (\$250).

(w) The commissioner may by rule require payment of a fee for filing a notice or report required by a rule adopted pursuant to Section 25105. The fee required in connection with a transaction as defined by that rule shall not exceed the fees specified in subdivision (c) based on the value of the securities sold, but the commissioner may permit a single notice for more than one transaction.

(x) The fee for filing the first notice of transaction under subdivision (n) of Section 25102 is six hundred dollars (\$600).

(y) The fee for filing a notice of transaction under subdivision (o) of Section 25102 shall be the fee for filing an application for qualification of the sale of securities by permit under paragraph (1) of subdivision (b) of Section 25113 as set forth in subdivision (e) of this section.

(z) The fee for filing a notice of transaction under subdivision (h) of Section 25103 shall be six hundred dollars (\$600).

SEC. 10. Section 25608.1 of the Corporations Code is amended to read:

25608.1. (a) The fee for an investment company filing a notice pursuant to subdivision (b) of Section 25100.1 is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

(b) The fee for an issuer filing a notice pursuant to subdivision (a) of Section 25102.1 is six hundred dollars (\$600).

(c) The fee for an issuer filing a notice pursuant to subdivision (d) of Section 25102.1 is three hundred dollars (\$300).

(d) (1) The fee for an investment adviser filing a notice pursuant to subdivision (b) of Section 25230.1 is one hundred twenty-five dollars (\$125) and the fee for filing a notice or report required by rules adopted pursuant to subdivision (c) of Section 25230.1 is twenty-five dollars (\$25).

(2) The commissioner may charge a fee up to thirty-five dollars (\$35) to keep in effect for the following year any notice or report required by rules adopted pursuant to subdivision (b) of Section 25210 or subdivision (b) of Section 25230.

(3) The commissioner may by order summarily enjoin an individual from performing any activity under subdivision (c) of Section 25230.1 if the annual fee required by paragraph (2) is not paid on or before the day upon which payment is due. An order under this paragraph may not be made before 10 days after notice by the commissioner that the fee is due and unpaid.

SEC. 11. Section 29542 of the Corporations Code is amended to read:

29542. (a) If, in the opinion of the commissioner, any person is engaging in any activity in violation of any provision of this law, or rule or order under this law, the commissioner may order the person to desist and refrain from the activity unless and until

the activity will not be in violation of any provision of this law or any rule or order under this law.

(b) If after an order has been made under subdivision (a), a request for hearing is filed in writing within one year of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5, (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under the Administrative Procedure Act. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the commissioner and shall not be subject to review by any court or agency, notwithstanding Section 29563.

SEC. 12. Section 29545 of the Corporations Code is amended to read:

29545. (a) The commissioner may take actions that are authorized by Section 13a-2 of Title 7 of the United States Code (Section 6d of the federal Commodity Exchange Act) as amended before or after the effective date of this section.

(b) Nothing in this section shall be construed as a limitation on the powers of the commissioner under this act or any other law administered by the commissioner.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2013

Governor